



A
TREATISE

CONTAINING DIVERS

Benefits and Priuiledges, and the power

and authoritie granted to the Patentee, who hath

his Maiesties Licence or Grant of Charter

Warren under the great Scale of England.

¶ Collected out of diuers of the Lawes

and Statutes of this Kingdome, and Viewed and

allowed by Sir HENRY YELVERTON Knight,

his Maiesties Attorney Generall, for all those

who take the Graunt.

¶ To be deliuered to them at the Office

thereof, kept at the house of Sir HENRY BRETON

Knight, one of the Commissioners for

making of the said Graunts, in

DRURY Lane.

Anno Dom. 1617.

349 ; 06



¶ The Collections for the authoritie of
the Free Warrens.

ALl ciuill and wel gouerned common wealths haue euer and doe necessarily nourish and mainetaine all things that tend to these two things, *Profit* and *Pleasure*, the one for the essence, the other for the honor of it; and all Princes and their Subiects of worthy and generous spirits, haue had a vigilant eie by law & order to the preseruacion of those creatures that are created for pleasure, being for the solace and liuelihood of man, and provided for him in his first creation, as necessary for the recreation of his mind, clothes for his outward ornament, or well tasted dishes for his pallet: For if man should haue nothing but *ad esse*, meerly for nature to subsist, how poore and deiected a creature should hee be. and how much inferiour to many beasts in these outward things? Therefore hath the Creator provided from the beginning both the creatures and the meanes for mans delight, yet with a difference to man therein for some of his seruants to exceed the rest, that they may haue suppeditaments and ornaments of life, *ad bene & melius esse*, for recreation sake, which haue beene euer by the best spirits desired: For how base and vnworthy a mind should that man haue, being borne or aduanced to good possessions & fortunes, that should subiect himselfe to the drudgerie and slauerie of the earth in meere matter of getting and coueting, as if he were the true childe of *Adam*, only in that necessitated qualitie of digging his liuing out of the earth, whereunto he was by God cursed, and so should in nothing

else bee eleuated to more worthy consideration of better things instituted by the Creator? For as the all disposer by order & gouernment vpon earth hath appointed in euery Monarchy (being the best gouernment) degrees of honor & difference of ranks and qualities amongst men, so he hath to them in their seuerall places and estimation thereunto annexed all such other outward supplies of pleasures and delights as are fit for such men, as *Deere, Stagge, Cony, Pheasant, Partridge*, and the like; yet so as the wisdom of this and other ciuillized Kingdomes hath been such, as it hath giuen a more absolute power and priuiledge therein to the King, then to any man, though they are called to bee *fera natura*, they are said more properly to be the Kings then any mans, as by waie of interest by reason of his prerogatiue, of giuing the subiect liberty to inclose & containe them in each mans seuerall ground, by Parkes and Warrens, &c. and to giue an interest and propertie to man therein to hunt, hawke, and chase them by licence in each mans own possession, and to distreine others from it, as shall appeare from time to time by the lawes of this Kingdome collected in this short discourse. But because it is the common humour of men to cast there eie onely vpon that thing that tendeth to matter of profit, or at least much more then pleasure and other contentment, and for that these maner of priuiledges of Free Warren, and the like, being the Kings Graces and deriuatiues from the prerogatiue of the Crowne, are not so well and vsually vnderstood, but conceived to bee meere matter of pleasure, and not of benefit or profit, being not in the common vse among men; it hauing beene a thing so deintie and precious to be had heere-tofore, and so rarely granted, that subiects of the greatest and wisest sort of all rankes haue beene speciall suitors in all ages, to the Kings and Queens of this kingdome to obtaine it, as may appeare by seuerall graunts from time to time.

And

And that no man may bee ignorant, aswell of the benefit and profit, and present necessarie vse of it, aswell as the pleasure of it; I thought it not vnfit to set downe a summarie, or brieft repetorie of some of the Lawes of this Kingdome, and the vse and practise thereof from time to time in this case; whereby it shall appeare, that by comparing our present with the times past, by the number of Parkes and increase of game of all sorts, and the present state of this Kingdome, there will be much more vse and necessitie hercot in these times to all men, then in former; and doubt not but to giue satisfaction that the profit and vse heereof shall be great to all men for whom it is fit; who haue Mannors, Wastes, Commons, Parke, or Warren, and the like, not licensed by his Maiestie or his predecessors grant: For that to those who haue Wastes, Lands, and Grounds barrened by Corne, or so by nature, the profit thereof may arise as the occasion shall be, and to those that haue Parkes and Warrens vnlicensed, his Maiesties Writ of *Quo warranto* may and doth iustly lie, being no more reason that any Subiect should vsurpe a priuiledge proper and of right belonging to the King, then hee theirs; and without this priuiledge or graunt what recompence men vsually haue vpon euery Action of Trespasse brought for killing Deere, Conies, or the like, euerie mans experience teacheth him to his losse. Why then, what encouragement can any man haue to plant or reduce to seuerallie Warren or Parke vpon his waste or lands fit for it, which may happlie be verie profitable, when being not licensed vpon any spoile, killing or taking the Game, hee cannot iustifie his Action against him for the same, nor recouer damage; but as in an ordinarie Action of Trespasse, for comming vpon the ground, which how poore a recompence it is for a mans losse, men do daily feele. All which shal sufficiently appeare by the collection of the Lawes heerein: So as I may con-

clude, that whosoever shall obaine this grant from his Ma-
 iesty, by vertue of his Maiesties Commission, being at the
 humble suit, and for the contentment of many of his Sub-
 iects, shall so ioyne and furnish himselfe with pleasure and
 profit, that it may bee truely sayde of him to hold a good
 course, according to that, *Omne tulit punctum qui miscuit*
utile dulci. And it shall appeare that this priuiledge and pre-
 rogatiue and interest of the Kings, is not onely in Parkes,
 Warrens, and in beasts; but also in fowle and fish in the
 waters and ayre, in those creatures the propertie whereof
 is vnknowne: *Volatilia enim quæ sunt feræ naturæ, alia sunt*
regalia, alia cõmunia, & sic aquatiliũ. A Swan is a royal fowle,
 and all those the propertie whereof is not knowne, belong
 to the King by his prerogatiue; so are and Sturgions
 royall fish, and belong to the King by prerogatiue; but a
 Subiect may haue a propertie in Swans marked with vse
 vpon his priuate waits, and a Subiect may prescribe to haue
 a game of Swans within his Manor, as well as a Warren or
 Parke. And it is resolued that in somethings which are
 wilde by nature a man hath right of propertie, and in
 some of them he hath a right of priuiledge; and that there
 are three maners of rights of properties, to wit, proper-
 tie, absolute, propertie qualified, and propertie possessory;
 propertie absolute a man hath not in any thing which is
 wilde by nature, but in those onely which are tame by na-
 ture; propertie qualified and possessorie a man may haue in
 things which are wilde by nature, and may attaine there-
 unto two waies; by industry, and by reason of their disabi-
 lity and of the place; by industry, as by taking of them and
 making them tame; but in those a man hath but a qualified
 propertie so long as they remaine tame, for if they get their
 former libertie & haue not *animum reuertendi*, the property
 is lost by reason of impotency and of the place. As where
 a man hath young Hernshawes, Goshawkes or the like,
 which

which are by nature wilde and do Eyre in his ground, there hee hath a possessory property in them, for in that case the owner shall haue Trespasse, for breaking his Wood and taking away his Hawkes, &c. of such a price; But when a man hath wilde beasts, *ratione priuilegij* which growes by the Kings graunt or prescription, as by reason of a Manor, Parke, &c. he hath no property in the Deere, Conies, Pheasants or Partridges without the Kings graunt: For in a Trespasse hee shall declare for entring into his Parke, Warren, &c. and so many Deere, Conies, Hares, Pheasants, Partridges, &c. and shall not stay him; for he hath no property in them, but they belong to him *ratione priuilegij*, for his game and pleasure so long as they remaine in the place priuiledged, and the heires shal haue them, and not the Executors. By this it appears that if a man haue none of these properties in any wilde beasts by nature, he cannot maintaine Action for taking them away, and so is the Booke expressly: For a man cannot prescribe to haue all Pheasants and Partridges building, breeding, and vsing within his Manors, but must prescribe or plead that hee hath a Free VVarren of them within his Manors.

A man may haue a Warren in another mans ground by prescription, but not by graunt from the King in another mans ground; the King cannot graunt a VVarren to one, but in his owne demesne lands.

Stathamish
Warre 43. E. 3

If any take a Partridge out of my VVarren, my Writ shall be, *Quod cepit leporarios perdices, Cuniculos, &c.* and of all other beasts of the VVarren: And if the Trespassor be found guiltie of any one of them, I shall haue damage for euery one of them, *Pari ratione* for Conies and Deere.

If a man be condemned for hunting in a VVarren, the Fine shall be greater then in a Trespasse.

15. H. 7. 16.

If a Trespasse be brought against one for entring into his warren, and for taking his Conies, if the plaintiffe haue

10. H. 6. 16

no

*Brook's action
for lib. 48.
temp. E. 2.*

W. E. B.

*Rastall sit.
Mortmaine St.
27. E. 1.
De libertatibus
perquirendis.*

C. fo. 310.

10. H. 7. 30.

no VVarren by the Kings grant or prescript, the defendant shall not be found culpable.

It was agreed that a man may inclose his land, but hee ought not to make any Parke therein for the keeping of any wilde beasts without the Kings licence; for if he doe, it shall be seised into the Kings hands.

By this Statute it was ordeined that such as would purchase new Parkes, should haue VVrits out of the Chauncery to inquire vpon the points accustomed in such things, and that the Inquests of lands or tenements that be worth yerely more then xx. shillings by extent, be returned into the Exchequer, & there they to make fine for the hauing of the Parke, if the Inquest doe passe for him that purchased them: and from thence it shall bee certified vnto the Chauncellor or his Leiftenant. And that he took a reasonable fine therefore, according to the quantity of the thing, and after to deliuer them; in like maner be it done of them that purchase and holde in chiefe. And if any will purchase any VVarren or other libertie, they shall be sent into the Exchequer, and there shall make their fines; and from thence shall be sent to the Chancellour for that they ought to doe therein.

An Action of Account will lie for the Deere and profits of the Parke, and no man hath interest to take any Deere in a Parke but the owner. And Gardian in Soccage shall render an account of the Deere: and in *St. de magna charta*, Gardians shal vphold and maintaine Parks and VVarrens, & shal render them to the heire when he comes to full age, full stored, at least in such wise as hee found them, which is intended aswell of the game as the inclosure. And before the *Statute of Westminster*, the first, an Action of Trespasse would lie for taking of Deere in an others soyle, and damages should bee assessed according to the offence by the discretion of the Iurors; the inclosure of a ground makes it

no

no' Parke, but the content comprised within the inclosure in the Parke; and the common forme of graunting a Parke is to inclose so much land, and thereof to make a Parke, which is by the Kings Graunt and Licence onely.

An Action vpon the Statute for trespassing in a Parke, whereby to recouer the penaltie of the Statute, will not lye, but where one hath a Graunt from the King, or Prescription. For where one of himselfe doth imparke a ground, hee can haue but a generall Action of Trespasse for entring into the same, and what dammage and recompence the plaintife shall haue in that case, euery mans experience teacheth him.

If the King licence a man to imparke two hundred acres of ground, and hee doe inlarge the same afterwards with a hundred acres more; this is no Parke, *Quere*

Brooke Patent
76.23.H.8.

If any bee attainted for Trespasse in any Parke, at the suit of the partie, great and large amends shall be awarded according to the Trespasse, and three yeeres imprisonment, and after shall make Fines at the Kings pleasure (if hee haue whereof) and then shall finde good suretie that he shall not commit the like Trespasse; and if hee haue not wherewith to make Fine after three yeeres imprisonment, he shall finde like suretie; and if hee cannot finde like suretie, he shall abiure the Realme. And if any guiltie thereof be found fugitiue and haue no lands sufficient (whereby he may be iustified) so soone as the King shall finde it by Inquest, he shall be proclaimed from Countie to Countie, and if he come not, he shall be outlawed; and if none thereupon doe sue within a yeere and a day, the King shall haue the suit. And if such trespassour take tame beasts in a Parke or other thing; let the common Law bee executed vpon him, as vpon one for theft and robberie.

Reff. forrest 18
52. West. cap.
20. 3. E.

Trespasse, *De malefactoribus in parcis*, lies onely for Tres-

31. H. 7.

B

passe

Com. 124.

paſſe done in Parkes by the Statute of Weſtmiſter 1. and not for Treſpaſſes done in Forreſts, and this Statute ſhalbe taken ſtriſt.

Dyer fo. 238.

Wye, and others were condemned vpon the Statute of Weſtmiſter, the Firſt, *cap.* 20. For the taking of a Sorcerell, and ten Raſkals in a Treſpaſſe. And the defendants being in the priſon in the Maſkhalſey after three yeres were compelled to finde ſureties of London and Southwarke, whereof two were Gentlemen and yomen, by Recognizance euery ſuretie in tenne pound, and the defendant himſelfe in fortie pound to the King, that he ſhould not offend againſt the Statute in any Parke or VVarren which was not licenſed.

Brook Treſpaſſe
106. 5. H. 5. 1.

Iudgement in a Treſpaſſe of entring into a Parke to courſe, although nothing was killed, was thus; xl. ſhillings for the coſts and dammages, and that the defendant ſhould be imprifoned three yeres, and to pay a Fine to the King; and at the three yeres end to finde ſureties that hee ſhould not offend againe: and if he cannot finde ſureties, then to foriure the Land.

21. H. 6.
59. Fitzh. 69.

A man ſhall not haue an Action of Treſpaſſe for taking or killing his Deere, vnleſſe hee be a tame Deere; but an Action will lie for breaking into his Parke being licenſed, and taking away his Deere *precij*, &c.

Cooke. lib. 9. fo. 7

If a generall Action of Treſpaſſe bee brought for treſpaſſing in Parks, the plaintife ſhal not haue Iudgement vpon the Statute: And therefore the Action muſt be brought vpon the Statute of Weſtmiſter 1. although the Statute giue no forme of Action.

Raſtall fo.
7. St. 1. H. 7. c. 7.

If any perſon hunt in any Parke, Warren, or Forreſt ſo licenſed, by night, or with painted faces, viſors, or other diſguiſements; If information thereof be giuen to any of the Kings Councell, or Iuſtices of Peace, they may thereupon make warrant to the Shiriffe, to bring ſuch perſon ſuſpected

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suspected before him who makes the warrant, or any other of the Kings Councill or Iustice of Peace within the same Countie, who may examine such offendour, and of others in that behalfe likewise offending. And if the person examined wilfully conceale the sayde huntings; or priuie person with him defectiue therein; then such concealments shall bee felony, and bee determined as other felonies: And if he confesse the truth, then such offences done by hunting shalbe against the King, but a Trespasse fineable, to be assessed by the Iustices of the next generall Sessions in that County to be held: And if any rescous be made in hindering the execution of such warrant, whereby such warrant cannot be executed, such rescous is felony: And if any be conuicted of hunting with painted faces, visors, or otherwise disguised, to the intent that they should not be knowne, or in time of night, the like punishment shalbe laid vpon him, as if hee were conuict of felony.

If any Forrester, Keeper, or Warrener, shall finde any wandering within his liberty, in any Forrest, Chase, Parke, or Warren, and such offendour (being by him or them required to yeeld to the peace) will not, but continues his offence, or flees, or defends himselfe with force and Armes; although any such Forrester, Keeper, or Warrener, or any other comming in their company and ayding such Forresters, Keepers, or Warreners, doe kill any such offendour, he shall not receiue any punishment for the same; But if any Forrester, &c. bearing malice to any man, will lie within his libertie, and will pretend against any passing through his lihertie that hee had an intent to offend, and vpon such malice doe kill him; this is felony.

A *Proviso* is there contained, that this Statute of conuerting tillage into pasture, shall not extend to any lawfull Parke, meant, licensed, or ancient Warrens now vsed with

*Stamford, fo. 14.
St. 21. E. 1.*

Rassall husbandry & tillage 7.

Ro. 2. 8. 6. St.
9. Elis. cap. 2. 1

Deere or Conies, or to any other Parkes heeretofore lawfully vsed as Parkes, and now disparked, or to any other grounds that heeretofore haue beene by any of her Highnesse progenitors, or heereafter shall fortune to bee made Parke or Warren by licence of our Souereigne Lady the Queene her heires and successours, with sufficient clause of dispensation for conuerting of tillage into pasture, and shalbe laid for the mainteining of Deere and Conies without couin, and not for the keeping of any other cattle or beasts, then milch Kine for themselves or their Keeper, for prouision of their houses, or for Horse, or Gelding, Mares, Colts, or Swine.

St. 3. Iacobus. 13

If any in the night or by day wrongfully doe enter into any Parke or Ground, vsed or kept for breeding of any Deere or Conies, and doe vnlawfully hunt, driue, or chase out, or take, kill or sleigh any Deere or Conies, against the will of the owner, and shall bee thereof conuicted at the suite of the King, or of the partie griued; he shall suffer imprisonment of his body by the space of three moneths; and also shall yeeld and pay to the partie griued his treble dammages and costs, and to bee assessed by the Iustices, before whom hee or they shall bee conuicted after the saide three moneths expired, and shall finde sufficient sureties for his good abearing, &c. for the space of seuen yeeres after, or else shall remaine and continue still in prison, without Bayle or Mainepriise, vntill they so doe finde sureties. And it shall and may bee lawfull to and for the partie griued to take his further remedie against all and euerie such offendour for his losse and dammage, and to recouer the trebble value of the same, as well before the Iustices of Oyer and Terminer, Iustices of Assise in their circuits, and Iustices of the Peace and Gaole Deliuery, in the Sessions, or else where in any of the Kings Courts of Record at West-

Westminster ; And vpon true satisfaction of the trebble dammages or vpon confession thereof by the partie offending, before the Iustices in open Sessions, in the Countie where the offence was committed, it shall bee at the libertie of the partie grieved, to release at his pleasure the suretieshippe of the good behauour at any time within the seuen yeeres, or before.

No person not hauing lands of tenne pound cleere yeerely value, or worth in goods and chattels, two hundred pounds, shall vse any Gun, Bow, or Crosse-Bow to kill any Deere or Conies, or shall keepe any Buck-stall, or Engyn, Hayes, Gabents, Pursnet, Firrets, or Conny-dogs; except such as haue any ground imparked with Pale or Hedge, vsed for keeping and breeding of Deere and Conies; the increase of which Conies shall amount to the cleere yeerely value of fortie shillings to bee letten at least; or Keepers or Warreners in their Parkes, Warrens, or Grounds, belonging to their charge. And if any such person so offend, any one seised of lands, in Fee, Fee-tayle, or for life, of the yeerely value of one hundred pounds, may take to his owne vse for euer, any such Gun, Bow, or Crosse-Bowe. St. 3. Iacobi c. 13

Iustices of Oyer and Terminer, Iustices of Assise in their circuits, and Iustices of Peace and Gaole Deliuerie in their Sessions, shall haue authoritie to inquire of these offences done in their grounds, and award Proesse thereupon, as well vpon Inditement taken before them, as by bill of Complaint, Information, or any other Action; in which suit or Action, no Essoine, Protection, or wager of Law is allowed. And if any bee bound, as aforesaid to the good behauour, if at any time within the seuen yeeres, before the Iustices of St. 3. Iacobi c. 13

Peace of the saide Countie where the offence was committed, or some of them in open quarter Sessions, doe acknowledge his offence, and confesse himselfe to bee sorrie for the same, and satisfie the partie griued for his Act: Then the same Iustices haue power in that their open Session, or any other, if it seeme good to their discretions to discharge the partie so bound, and his Recognizaunce and Bond.

Provided, that this Act of 3 *Iacobi*, doe not extend to any Parke, or inclosed ground, made, or hereafter to bee made or vsed for Deere or Conies; without the Graunt or Licence of the King, his heires or successors.

FINIS.



